Supreme Court, U.S.
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No. 89-1424

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1989

LINDEN CROUCH,

Petitioner,

v.

KEVIN N. McINTYRE,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF
THE STATE OF OREGON

BRIEF IN OPPOSITION

Ronald Alfred Fontana
P.O. Box 12253
Portland, OR 97212
Tel. (503) 223-1390

Counsel of Record
For Respondent

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QUESTIONS PRESENTED

1. Is the state court's judgment final within the meaning of 28 U.S.C. section 1257(3) (1982)?

2. Does the Oregon artificial insemination statute which denies a biological father any parental rights to his child produced by artificial insemination violate the Due Process Clause of the Fourteenth Amendment where the unmarried mother had agreed that he was to have parental rights and the father's sperm was given to her in reliance on that agreement?

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BRIEF FOR RESPONDENT IN OPPOSITION

The Respondent Kevin McIntyre respectfully requests that this Court deny the Petition for Writ of Certiorari, seeking review of the Oregon Court of Appeals' opinion in this case. That opinion is reported at 98 Or.App. 462, 780 P.2d 239 (1989).[1] Respondent accepts as adequate for review, petitioner's statement of the opinions below and her statement of the constitutional and statutory provisions involved.

JURISDICTION

Although petitioner filed a timely petition for certiorari, this court lacks jurisdiction because the state court's

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[1] The Petitioner has requested that a writ be directed to the Oregon Supreme Court. That Court merely denied discretionary review and did not consider the merits. 308 Or. 593 (1989). Petitioner's request should be for a writ to the Oregon Court of Appeals.

judgment is not final within the meaning of 28 U.S.C. section 1257(3) (1982). This issue is discussed below as a reason for denying the petition for certiorari.

STATEMENT OF THE CASE

This brief will first discuss the procedural posture of the case and then the material facts. The brief will then discuss the reasons why the petition for a writ should be denied.

I. The Procedural Posture of this Case.

This litigation arises out of a Petition to Establish Filiation filed by Respondent Kevin McIntyre in the state trial court. Mr. McIntyre alleged that he is the unmarried father of the infant child Glenellen Susan Arkin born to the unmarried Petitioner Linden Crouch by artificial insemination pursuant to an agreement between them that he was to have certain parental rights to the child, including visitation according to

a specific schedule. Ms. Crouch filed a motion for summary judgment, claiming that Mr. McIntyre had no parental rights as a matter of Oregon law. Mr. McIntyre cross filed for summary judgment, claiming that the Oregon statute, Or.Rev.Stat. 109.239 (1 Or Laws 1977, ch 686), violated his Fourteenth Amendment rights to due process by denying him a hearing to establish that he is the child's father, that he is a fit parent and that the parties had agreed that he would have parental rights. Although Ms. Crouch neither testified nor filed an affidavit to deny the agreement, her attorney orally told the trial court that an agreement was irrelevant and that they would dispute it.

The trial court found that there were no disputed questions of material fact and granted Ms. Crouch's motion for summary judgment, ruling that the Oregon

artificial insemination statute extinguished any right Mr. McIntyre might otherwise have to the child.

The Oregon Court of Appeals reversed. McIntyre v. Crouch, 98 Or. App. 462, 780 P.2 239 (1989). It held, as a matter of procedural law, that there were disputed issues of material facts respecting the existence and nature of the agreement that made summary judgment for either party improper. It further held that if Mr. McIntyre can establish that the parties had "agreed that he should have the rights and responsibilities of fatherhood and in reliance thereon he donated his semen", then the Oregon artificial insemination statute, as applied to Mr. McIntyre, would violate the Due Process Clause of the Fourteenth Amendment. The Court of Appeals remanded the case to the trial

court for a hearing to determine the facts.

If, on remand, the trial court were to find that there was no such agreement or reliance then, presumably, the trial court would declare Mr. McIntyre to have no parental rights.

II. Statement of Material Facts.

Because this litigation arises on Ms. Crouch's motion for summary judgment, the following facts, drawn from the affidavits filed in opposition to the motion, are set out in the light most favorable to Mr. McIntyre. See Seeborg v. General Motors Corporation, 284 Or. 695, 699, 588 P.2d 1110 (1978) (under Oregon procedure, "[t]he record on summary judgment is viewed in the light most favorable to the party opposing the motion").

Kevin McIntyre is a resident of the State of California. He has been friends

with the Linden Crouch for over thirteen years. Mr. McIntyre had been attempting since 1980 to have a child through adoption. Since 1983 he has attempted to have a child through a surrogate mother or to parent a child through artificial insemination where he would have continuing parental rights. Ms. Crouch previously attempted to find for Mr. McIntyre, a woman who would be willing to serve as a surrogate mother to produce a child with and for Mr. McIntyre. At one time, in about 1983, Ms. Crouch herself offered to serve as a surrogate mother to have a child by Mr. McIntyre and to give up any maternal rights to the child. Mr. McIntyre declined the offer out of concern that Ms. Crouch was not then mature enough to make such a decision.

In November 1985, when Mr. McIntyre was at the home of the Ms. Crouch's parents for Thanksgiving, Ms. Crouch

asked whether Mr. McIntyre would be willing to father her child. Mr. McIntyre made it clear that he had no interest in serving as a simple donor of sperm without continuing full parental rights. Ms. Crouch claimed that she indeed wanted him to actively share parenting with her. Only after further assurances about this from Ms. Crouch, did Kevin McIntyre, in December 1985, agree to have a child with Ms. Crouch.

Ms. Crouch stated that it was important to her that her child have a father who would be active in its life and that was why she had chosen Mr. McIntyre to father her child. Over the next several weeks they continued to discuss their parenting. They discussed and agreed on issues including amniocentesis during pregnancy, the child's religion, baptism, schooling in public schools, discipline. They

specifically discussed how important it would be for the child to have Mr. McIntyre's male influence in its life and to be able to share the broadening experiences of travel which Mr. McIntyre could provide.

The parties agreed that they would share specific events in the child's life such as the determination of pregnancy, recognition of fetal heartbeat, estimated date of delivery, the delivery of the child, participation in choosing the child's name, seeing the child take its first steps and hearing the child's first words. They agreed that Mr. McIntyre would have visitation with their child one weekend each month and for six consecutive weeks each summer.

After all these things were discussed and agreed upon, the parties agreed to and did get together on February 16, 1986, in Oregon to attempt

conception. In reliance on his agreement with Ms. Crouch, Kevin McIntyre placed his semen in a jar from which Ms. Crouch then inseminated herself. There was no doctor, sperm bank or health professional involved in the insemination.

In March, Ms. Crouch informed Mr. McIntyre that she was pregnant with his child. Later, when the child's sex was determined, she sent him a banner printed with "It's a girl!" The parties met again in Oregon in May prior to Mr. McIntyre leaving a a trip to Europe. They talked of some day traveling together with their daughter in Europe.

The parties again met in August, 1986 and attempted, without success, to agree on a name for their daughter. Ms. Crouch told Mr. McIntyre that he should obtain a bassinet, car seat, clothing and diapers for their daughter's use when she was with him in California. Mr.

McIntyre's mother gave him a changing table and clothes for his daughter's use. She also sent other items for her future granddaughter to Ms. Crouch. At least through August, 1986, Ms. Crouch told friends that Mr. McIntyre was to have frequent visitation with their daughter including alternating holidays, birthdays and vacations.

After August, Ms. Crouch's attitude toward Mr. McIntyre's parenting soured. Ms. Crouch gave birth to the parties' daughter on November 24, 1986. Mr. McIntyre learned of his daughter's birth from Ms. Crouch's parents. Since his daughter's birth, Mr. McIntyre has been denied any contact with her.

Kevin McIntyre filed his filiation petition in February 1987.

REASONS FOR DENYING CERTIORARI

I. <u>The State Court's Judgment Is Not Final</u>.

The Oregon Court of Appeals reverrsed the trial court's grant of summary judgment and remanded for trıal. As a general rule, a state court's judgment that contemplates further proceedings, as this judgment does, is not final for the purposes of 28 U.S.C. section 1257(3) (1982). See Cox Broadcasting v. Cohn, 420 U.S. 469, 479-85 (1975). Nor does this case appear to fall within any of the exceptions to the rule idenitified in Cox Broadcasting.

This is not a case in which the outcome of further state proceedings is preordained. Cox Broadcastin v. Cohn, supra, 420 U.S. at 480. The trial court has yet to determine the factual issues of whether there was agreement between the parties as to Mr. McIntyre's parental rights, whether there was reliance on that agreement, as well as what parental

rights and responsibilities, if any, Mr. McIntyre has to his daughter.

This is not a case in which the federal due process issue will remain regardless of the outcome of the trial on remand. See Id. at 479. If at trial Respondent is unable to prove the agreement, he will have had his due process and could not appeal that issue, while Petitioner would have no cause to appeal the due process determination.

This is not a case where the federal issue will necessarily be mooted on remand. Id. at 481. If the trial court finds that the agreement or reliance is less than what the Respondent had alleged, doubt may exist as to whether the Oregon Court of Appeals' test has been met, thus occasioning further appeal on the due process issue.

Finally, this is not a case in which the failure to grant review immediately

would seriously erode federal policy. See Id. at 482-83.

Rather, this case is more like Minnick v. California Dept. of Corrections, 452 U.S. 105 (1981). There, this Court found that the substantial questions of fact remaining even after an initial trial, required that remand to the trial court proceed before this Court would entertain review.

II. There Is No Conflict with Other States or Circuits. Petitioner has cited no decision of any state or circuit which is in conflict with the Oregon Court of Appeals decision in this case. Respondent is aware of only three cases at all similar to the case at bar. In each case, the Court ruled that the father was entitled to a hearing to establish his parental rights. In no case did the court have to reach the question of whether a state could

constitutionally eliminate a donor's parental rights to his child created by artificial insemination. In those cases involving a statute which purported to limit the rights of the donor, the courts construed the statute to be inapplicable.

In the case most similar to the case at bar, In Interest of R.C., 775 P.2d 27 (Colo. 1989), the Colorado Supreme Court held that that state's artificial insemination statute did not apply to known semen donors and unmarried recipients who agree that the donor will be treated as the child's father. The Court noted that a number of commentators have concluded that the intent of the known donor and the unmarried recipient is relevant to a determination of parental rights.[2] The court also

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[2] See Andrews, Legal Aspects of New

reviewed the two cases cited below and

Reproductive Technologies, 29 Clinical Obstetrics & Gynecology 190, 200 (1986) (as artificial insemination laws evolve, they "should take the approach of allowing the parties' preconception intent to govern paternity"); Kern & Ridolfi, The Fourteenth Amendment's Protection of a Woman's Right To Be a Single Parent through Artificial Insemination by Donor, 7 Women's Rts. L. Rep. 251, 256 (1982) (if custody suit between unmarried recipient and known donor were to arise, "the court may view the expectations (or intent) of the parties as relevant"); Vetri, Reproductive Technologies and United States Law, 37 Int'l & Comp.L.Q. 505,514 (1988) ("We use the intent of the parties when the woman is married in determining parental responsibilities, and should do so in the rare cases when the woman is unmarried."); Note, Artificial Insemination: Donor Rights in Situations Involving Unmarried Recipients, 26 J.Fam.L. 793, 806 (1988) (in situations where a known donor is involved with an unmarried recipient, a court will consider the familial expectations" of the donor "with the intention of the donor toward the resulting child at the time of insemination being a key factor"); Andrews, Legal Aspects of Assisted Reproduction, 54 Annals N.Y.Acad.Sci. 668, 674 (1988) (in thirty states by statute and in many other countries, "the preconception intent of the parties [in artificial insemination

concluded, "the result is inescapable that intent of the parties was a relevant consideration in determining whether the known donor's parental rights were extinguished." Id. at 34. Accordingly, the Court held,

> Where ... the unmarried recipient and the known donor at the time of insemination agree that the the donor will be the natural father and act accordingly based on an express understanding that he will be treated as the father of any child so conceived, we concur with the commentators, as well as the Jhordan C. and C.M. courts, that agreement and subsequent conduct are relevant to preserving the donor's parental rights despite the existence of the statute. Id. at 35.

Jhordan C. v. Mary K., 224 Cal.Rptr. 530, 179 Cal. App. 3rd 386 (1986), also involved a known donor of semen to an unmarried woman. The California court construed that state's artificial

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cases] governs who are the legal parents after the child is born").

insemination statute to not apply to inseminations which did not involve a physician. Hence, the court held that the donor-father was not precluded from pursuing a paternity action and was entitled to visitation rights to his child.

In C.M. v. C.C., 152 N.J. Super. 160, 377 A.2d 821 (1977), the New Jersey Court held that a father is no less so because his child is created by artificial insemination of his sperm rather than by intercourse. New Jersey had no artificial insemination statute in effect at the time. The parents had known each other for some time and were contemplating marriage. There had been no agreement about parental rights. The court found particularly significant the facts that the child had "no one else who was in a position to assume the responsibilities of fatherhood when the

child was conceived" and that the donor "fully intended to assume the responsibilities of parenthood" at the time of insemination. Id. at 165-67, 377 A.2d at 824.

III. The Case Was Correctly Decided and Is Consistent with this Court's Prior Decisions.

The Oregon Court of Appeals correctly held that Respondent has a liberty interest deserving of constitutional protection under the Fourteenth Amendment. The parent-child relationship has been acknowledged to be a liberty interest subject to constitutional protection since Meyer v. Nebraska, 262 US 390, 399, 67 L Ed 1042, 43 S Ct 625, 29 ALR 1446 (1923). Its protection has continued over the years in such decisions as Skinner v. Oklahoma, 316 US 535, 541, 86 L Ed 1655, 62 S Ct 1110 (1942), and Prince v. Massachusetts,

321 US 158, 166, 88 L Ed 645, 64 S Ct 438 (1944). An unwed father was found to have a liberty interest in his relationship to his children in Stanley v. Illinois, 405 US 645, 31 L Ed 2d 551, 92 S Ct 1208 (1972), where this Court held that to automatically remove custody from an unwed father upon the death of the mother, without notice and a hearing on fitness, created an unconstitutional presumption that all unwed fathers are unfit parents.

While Stanley, supra., considered the father's rights versus the rights of the state, each of this Court's subsequent cases dealing with an unwed father's rights has involved the additional and competing claim of the husband of the child's mother. (In contrast, the Petitioner here is unmarried and there is no father figure available to the child other than the Respondent).

In cases where the mother has married subsequent to the child's birth, this Court has found that the protection afforded the unwed father's rights versus the husband's rights to his stepchild depends upon whether the natural father has demonstrated a substantial relationship to, or paternal interest in, his child and has acted with reasonable promptness in asserting his rights to the child.

In Quilloin v. Walcott, 434 US 246, 54 L Ed 2d 511, 98 S Ct 549 (1978), this Court found that the state of Georgia had provided the unwed father due process and that step-parent adoption by the mother's husband was in the best interests of the child where the natural father had been "afforded a full hearing on his legitimation petition, at which he was given the opportunity to offer evidence on any matter he thought relevant,

including his fitness as a parent." 434 US 246 at 253, 54 L Ed 2d 511 at 519. The Court noted that the natural father had not sought to legitimate the child until after the step-father had petitioned to adopt the then eleven year old child. This Court appeared to be particularly impressed with the fact that while Quilloin had never sought either physical or legal custody, the mother's husband had been living with the child and serving as its step-parent for the last nine plus years.

In Caban v. Mohammed, 441 US 380, 60 L Ed 2d 297, 99 S Ct 1760 (1979), this Court held that New York's disparate treatment of unwed mothers and unwed fathers, requiring the mother's consent while not requiring the natural father's consent to his child's adoption by the mother's husband and not allowing the natural father to demonstrate his own

fitness as a parent, violated Fourteenth Amendment equal protection. The procedural due process issue was not reached.

Lehr v. Robertson, 463 US 248, 77 L Ed 2d 614, 103 S Ct 2985 (1983), involved the competing claims of a stepfather who had been married to the child's mother for one and one-half years and the natural father who, although he had lived with the mother up until the child's birth, had had almost no contact with the child since then and had never sought legal rights to the child until after the step-parent adoption petition was filed. This Court found that New York's statutes providing advance notice of adoption proceedings to persons who list their names on a putative father registry satisfied due process where the natural father had never listed himself with the registry and never sought legal rights to

the child until after she was two years old. The Court stated that when an unwed father demonstrates a full commitment to the responsibilities of parenthood by "coming forward to participate in the rearing of his child" Caban, 441 US, at 392, n. 7, 99 S Ct, at 1766, n. 7, his interest in personal contact with his child acquires substantial protection under the Due Process Clause. At that point it may be said that he "acts as a father toward his children." Id., at 389, n. 7, 99 S Ct, at 1766, n. 7.

Essentially, this Court found that New York had adequately protected Mr. Lehr's opportunity to form such a protected relationship with his child but that Mr. Lehr had not taken advantage of that opportunity.

In contrast, the Oregon Court of Appeals in McIntyre correctly found that Kevin McIntyre had "grasped the

opportunity" to "participate in the rearing of his child" as indeed he has done everything he could do to be involved with the rearing of the child. Even before the child's birth, Mr. McIntyre exercised his parental rights when he discussed and reached agreement with Ms. Crouch on various aspects of how the child was to be reared, including such matters as religion, education and discipline. This Court has found such parental decisions themselves to be liberty interests subject to constitutional protection in Meyer v. Nebraska, supra. and Pierce v. Society of Sisters, 268 US 510, 45 S Ct 571, 69 L Ed 1070 (1925). When Ms. Crouch then denied Mr. McIntyre contact with his child after her birth, Mr. McIntyre promptly filed this paternity suit to obtain visitation. By so doing, he has taken advantage of the only procedure the state has to

enable him to develop his relationship with his daughter.

Yet Ms. Crouch now argues that because Mr. McIntyre has not done more--such as live with the child for a period of years as had the father in Stanley, supra. -- Mr. McIntyre now should have no liberty interest or other rights to his child. Ms. Crouch ignores the fact that it is only because she has refused Mr. McIntyre further contact with his child that he has not further developed his relationship with his daughter.

In essence, Ms. Crouch's argument is that because she has prevented Mr. McIntyre from visiting his daughter, he is not entitled to a hearing on his legal rights to visitation. Such "might makes right" conduct does not square with the Due Process Clause of the Fourteenth Amendment.

Petitioner argues that the Oregon Court of Appeals has misread Lehr v. Robertson, 463 US 248, 77 L Ed 2d 614, 103 S Ct 2985 (1983) and implies that Mr. Lehr had a more substantial relationship than that involved in McIntyre and that Lehr lost because he had not had a more lengthy relationship with the child. In fact, this Court's decision not to upset the court-ordered step-parent adoption was based on a finding that Lehr had failed to record his name and address with the putative father registry, and that it was because of his failure to do so that he did not enjoy the due process notice and hearing which were available to him. It appeared important to this Court that Lehr had waited for more than two years after the child's birth to file his paternity petition. In summary, Lehr involved a competing stepfather who had legally adopted the child, a delay of

over two years in the biological father's filing of his paternity petition and a failure to utilize the procedures available to provide him with notice and opportunity to be heard. In contrast, Kevin McIntyre is the only available father for his child, no other court proceedings have occurred regarding the child, the mother has never married anyone and Mr. McIntyre promptly filed his paternity petition within sixty days of his daughter's birth.

Petitioner also argues that this Court's recent decision in Michael H. v. Gerald D, 491 US __, 109 S Ct 2333, 105 L Ed 2d 91, 51 LW 4691 (1989) would require that Respondent be found to have no liberty interest entitled to Fourteenth Amendment protection.[3] Petitioner

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[3]It must be noted that the plurality

acknowledged, at footnote 1 of her petition for review by the Oregon Supreme Court, that the decision is "fact based". Indeed, the peculiar and "extraordinary" fact that the child was born to a married woman living with her non-impotent husband dictated the decision in that case. The California Court of Appeals below had held it "a matter of overriding

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opinion's method of analysing a liberty interest was the opinion of Justices Scalia and Rhenquist only. The other justices specifically did not agree with the analysis employed in the plurality opinion. As Justice Brennan's dissenting opinion points out, four justices agreed that the natural father there had a liberty interest and a fifth justice assumed such a liberty interest for the purpose of the case. Further, Justice Brennan notes, five justices of the Court agreed "that the flaw inhering in a conclusive presumption that terminates a constitutionally protected interest without any hearing whatsoever is a procedural one." 105 L.Ed.2d at 114. (emphasis supplied).

social policy" that the mother's husband would be deemed the child's father. So too, a plurality of this Court held "Where, however, the child is born into an extant marital family, the natural father's unique opportunity conflicts with the similarly unique opportunity of the husband of the marriage; and it is not unconstitutional for the State to give categorical preference to the latter."[4] 105 L Ed 2d at 109. It would appear that the precedential value Michael H. v. Gerald D., supra, is limited to children conceived and born to women while they were living with their non-impotent husbands.

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[4]Still, Justice Brennan notes that "Five Members of the Court refuse to foreclose 'the possibility that a natural father might ever have a constitutionally protected interest in his relationship with a child whose mother was married to and cohabiting with another man at the

In summary, each of this Court's decisions relating to unwed fathers since Stanley, supra, have involved a mother's husband's claim of paternal rights in competition with the natural father's claim. With the sole exception of Michael H. v Gerald D., supra, which involved a child born into an extant marriage, in each case where the natural father has demonstrated a significant paternal interest and has acted promptly to develop and protect that interest, the natural father has been successful in preserving his parental rights. Where the natural father has failed to exercise and act quickly to protect his rights he has lost those rights to the mother's husband who had developed a defacto

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time of the child's conception and birth.'" 105 L.Ed.2d at 114.

parent-child relationship and who had legally formalized the relationship. None of this Court's decisions is in conflict with the Oregon Court of Appeals decision in McIntyre.

IV. This Case Is Unlikely to Recur.

As the above recitation of facts should make clear, this is a fairly unique case which is not likely to occur again. The Court of Appeals decision is narrowly tailored to the facts of this particular case and is dependent upon Mr. McIntyre proving on remand that the parties specifically agreed to share parenting rights and responsibilities to the child they were about to create by artificial insemination and that the insemination was in reliance on that agreement. The decision will affect few other parent child relationships.

The decision will have no affect on

anonymous donor inseminations which comprise the great bulk of inseminations.[5] Neither will the decision affect non-anonymous inseminations where there was no preinsemination agreement that the father would have parental rights. The Oregon Court of Appeals decision simply allows Kevin McIntyre to establish and enforce his agreement with Ms. Crouch. The

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[5]While it has been estimated that there may be as many as 20,000 women artificially inseminated annually in the United States (note, Reproductive Technology and the Procreation Rights of the Unmarried (1985) 98 Harv.L.Rev. 669, fn.1.), only some 1500 of these women are unmarried. (Donovan, The Uniform Parentage Act and Nonmarital Motherhood-by-Choice (1982-83) 11 N.Y.U.Rev. of Law & Soc. Change 193, 195.) Presumably, the great majority of these are anonymous inseminations involving doctors and sperm banks. And only some, presumably small, percentage of these nonanonymous inseminations involve any agreement that the donor is to retain parental rights to the offspring.

decision will not adversely affect other parent child relationships.

V. Or.Rev.Stat. 109.119 Does Not Provide Respondent Due Process.

Petitioner argues that due process is afforded Respondent by Or.Rev.Stat. 109.119. This statute is designed to provide protections to "a foster parent, stepparent, grandparent" or other relative who lived with the child. Reading the full statute it is clear that it is not relevant to this case. Or.Rev.Stat. 109.119(4) clarifies that the "child-parent relationship" which the statute concerns applies only to persons who have had physical custody of or resided with the child.[6] In addition, it

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[6]Or.Rev.Stat. 109.119 (4) provides: "As used in this section 'child-parent relationship' means a relationship that exists or did exist, in whole or in part, within the six months preceding the

should be noted that the Petitioner failed to raise Or.Rev.Stat. 109.119 either at trial or on appeal. It was first raised on her Petition for Review to the Oregon Supreme Court. That Court denied its discretionary review.

As Or.Rev.Stat. 109.119 does not apply to Respondent, it could not be construed to provide him with Due Process.

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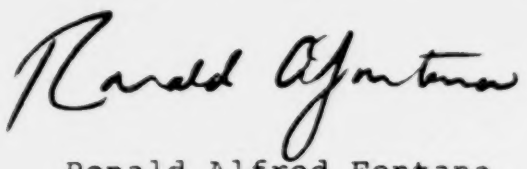
filing of an action under this section, and in which relationship a person having custody of a child or residing in the same household as the child supplied, or otherwise made available to the child, food, clothing, shelter and incidental necessaries and provided the child with necessary care, education and discipline, and which relationship continued on a day-to-day basis, through interaction, companionship, interplay and mutuality, that fulfilled the child's psychological needs for a parent as well as the child's physical needs. However, a relationship between a child and a person who is the foster parent of the child is not a child-parent relationship under this section unless the relationship continued over a period exceeding three years."

CONCLUSION

The Oregon Court of Appeals correctly decided McIntyre v. Crouch, Supra. The decision is consistent with the reported decisions of other states and of this Court. The Court of Appeals decision turns on and is narrowly tailored to the particular facts involved and will affect few other litigants. Further, the state court decision is not final and this Court lacks jurisdiction.

In short, there is no reason for the Supreme Court of the United States to review this case.

March 29, 1990 Respectfully submitted,



Ronald Alfred Fontana
OSB 76137
Attorney for Respondent
P O Box 12253
Portland, OR 97212-0253
Tel. (503) 223-1390